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CASES ON RESTRAINT OF INFRINGEMENT OF INCORPOREAL RIGHTS. A Collection of Cases with Notes. By Wm. Draper Lewis, Ph. D., Dean of the Law Department of the University of Pennsylvania. Philadelphia. International Printing Co. 1904. pp. xv., 405.

The reviewer confesses to a prejudice in favor of Professor LEWIS, based upon an acquaintance with his various articles within the realm of Torts. A reading of the present publication from beginning to end, not only justifies but materially increases the prejudice in behalf of the editor. A case-book may be prepared in three ways: it may consist simply and solely of a collection of cases arranged in such manner as to develop or to illustrate the law, without notes or annotation of any kind. This is the plan generally followed by Professor KEENER in the preparation of his well known collections. In the second place, the case-book may consist of carefully chosen cases with elaborate, painstaking, exhaustive, not to say exhausting, citation of cases (without statement of facts) in the various foot-notes. This is the method followed by Professor AMES in the majority of his case-books. The objection to this over-elaboration of citation is, that the student is so bewildered by the wealth of cases cited as not to know what case to examine or what not to neglect, for he cannot read all. He cannot see the forest for the trees, to use a German proverb. Without this examination he does not, and indeed cannot, well know what the cited case really is and what it stands for.

The case without editorial citation or comment lends itself admirably to class-room discussion; but gives no real or adequate idea of the law in general, other than in the particular jurisdictions from which the various cases are drawn.

A third method consists in the no less careful selection of cases, but in a combination of the previous methods of annotation. Instead of no citations, many are given; instead of a mere citation of cases without facts, a short statement of the facts of each case with the holding of the court is furnished. In this way the student not only masters the text, but a careful reading of the notes gives him a broad and concrete survey of the particular field of the law covered by the principal cases. Professor LEWIS has, it would seem, chosen this golden mean, and stands midway between the Masters of Case Law.

The subject-matter of Professor LEWIS' book is as interesting as it is important, and there is no other book covering or attempting to cover its field. "The present collection," he informs us in his preface, "is the result of an effort to supply this need. The term incorporeal right includes only those rights not exercised in a definite piece of real or personal property."

The method of selection and annotation, so happily followed by Professor LEWIS, is stated in his own words in the following weighty paragraph.

"The arrangement of the cases and notes needs a word of explanation. I believe that the way to study law is to follow from the original sources the development of leading principles. Under any topic the earliest case, or the earliest case having any real effect in the development of the law, is printed first. The notes to this case contain examples of cases in which the principle enunciated in the first case has been applied. Whenever the facts of the case in the notes differ in any degree from the facts of the case printed in full, or the leading case, the facts of the case cited are stated, so

that the student may apply the application of the principal. The earliest case which really modifies the principle of the first case, or which deals with a different phase of the topic under discussion, is printed as the second case, the notes to this case being treated in the same way as the notes to the first case. The next modification or development of the law is treated in the third case, and so on. Wherever there exists a conflict in the present law on a matter of importance, while the first case discussing the subject appears in its proper chronological place, the latest judicial contribution to the argument is printed at the end of the topic. The result of this arrangement is that the student in studying a subject goes through as nearly as may be the same process of mental development as the law itself has undergone. Though I am aware of the many shortcomings of the present collection, I am a firm believer in the 'theory' on which the collection has been constructed."

Leaving matters of method and form, the book consists of five chapters, dealing with the jurisdiction of equity over the following subjects: Infringement of patent right; Infringement of literary and artistic property, including common law property in books, letters, plays, lectures, news, statutory copyright and playright; Infringement of property in business reputation in matters of trade marks, trade names, unfair trade competition; Infringement in property in contracts, and the right to contract as affected by strikes, boycotts and unfair competition; and lastly the infringement of personal rights by libel, invasion of privacy and the invasion of personal liberty.

In two appendices, the well known case of the Emperor of Austria *v. Day* appears, and in the second appendix, the English cases in restraint of libel under the Judicature Act are given in brief but sufficient detail.

Two separate indices of cases reported and cases cited in the notes place the little book of four hundred odd pages at the immediate service of the serious-minded student.

The above paragraph sufficiently indicates the scope of the work. An examination of the text shows that Professor LEWIS has indeed selected either the earliest or the earliest important cases in his various titles and sub-titles. To the several chapters and sections he has prefixed an editorial note of real value. For example: The cases on the infringement of patent right are preceded by a four page note (pp. 1-4) on patents, in which the English and American law is briefly outlined, together with appropriate excerpts from the statutes. In the same way, the section dealing with statutory copyright and playright is introduced by a ten page note (pp. 87-96) on English and American statutes. A shorter note (pp. 199-200) deals with trade mark legislation.

It is not too much to say that the numerous and at times elaborate footnotes are of infinitely greater value than the editorial introductions. By way of illustration a few of these are specially indicated: Note on assignment of good will of business (pp. 115-117); trade marks protected by injunction (pp. 119-121); boycott and civil liability therefor (pp. 245-247, 248-250, 252-253); "picketing," including the editor's views on motive affecting civil liability (pp. 273-276); and the note on restraining issue of circulars (pp. 335-336).

In regard to the section on privacy (pp. 337-362) and the various notes appended to the cases, the reviewer has always thought that a

distinction might be drawn between the surrender of privacy for a public and for a commercial purpose. That is, that a public character loses his right to privacy so far as public curiosity is concerned but that a surrender of this to the public in general does not necessarily mean a surrender to a particular member of the public for a private or commercial purpose of this particular member. For example: A president of the United States, a distinguished general, statesman, lawyer, author, actor or actress, may very well be photographed and exhibited to an interested public; but that the portrait of such a person need not advertise a cigar or brand of whiskey. If the manufacturer wishes to advertise his wares by such means he subverts a private or commercial, not a public purpose; and if he wants more than his natural or public right, let him acquire it by contract as in the case of added or additional water-rights. The action of the New York Legislature by act of April 6, 1903, chapt. 132, sec. 2 (quoted in note p. 359) seems to be founded in this distinction and is sound in theory, as it is certainly wise and adequate in practice.

The work as a whole is excellent in substance, and the large print is a pleasure to the eye. There are a few misprints, which undoubtedly will be corrected in subsequent editions. For example: "Devins" on page 69 should be "Devens"; "it" should be "is" in the second line of the Lord Chancellor's decision on page 100; on page 111, the compositor put an extra "t" to his "attachment"; and on page 117, "Christie's Minstrels" broke through the parentheses.

These slight imperfections are not mentioned by way of criticism, but merely to enable the editor to make a well-nigh perfect book really perfect.

By way of final suggestion, an index to the collection would not be out of place.

#### REVIEWS TO FOLLOW:

AMERICAN ADVOCACY. A. H. Robbins. St. Louis: Central Law Journal Co. 1904. pp. xiv, 295.

FRENCH LAW OF EVIDENCE. O. E. Bodington. London: Stevens & Sons. 1904. pp. viii, 199.

A TREATISE ON SPECIAL SUBJECTS OF THE LAW OF REAL PROPERTY. Alfred G. Reeves. Boston: Little, Brown & Co. 1904. pp. lxxv, 913.

LABOR LAWS AND DECISIONS. J. A. Cipperly. Albany. Banks & Company. 1904. pp. vii, 143.

A TREATISE ON THE LAW OF WILLS. John R. Rood. Chicago: Callaghan & Co. 1904. pp. lxxvi, 635.

STREET RAILWAY REPORTS. Vol. II. Edited by Frank B. Gilbert. Albany: Matthew Bender. 1904. pp. xix, 1051.

CURRENT LAW. George Foster Longsdorf, Editor in Chief. St. Paul: Keefe-Davidson Co. 1904. Vol. I, x, 1208; Vol. II, xviii, 2195.

A BRIEF SURVEY OF EQUITY JURISDICTION. Prof. C. C. Langdell. Cambridge: The Harvard Law Review Association. 1905. pp. 303.

THE ORGANIZATION AND MANAGEMENT OF BUSINESS CORPORATIONS. Walter C. Clephane. St. Paul: West Publishing Company. 1905. pp. xxvi, 246.

A TREATISE ON EVIDENCE IN TRIALS AT COMMON LAW. Vol. IV. J. H. Wigmore. Boston: Little, Brown & Co. 1905. pp. xiii, 3185-3921.

FEDERAL PROCEDURE. Robert M. Hughes. St. Paul: West Publishing Co. 1904. pp. xviii, 634.